

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R7-2-1001 | Amend |
| R7-2-1011 | New Section |
- 2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 15-213

Implementing statute: A.R.S. § 15-213(A)(3)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

None
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Christy Farley Executive Director, State Board of Education
Address:	1535 West Jefferson, Room 418 Phoenix, AZ 85007
Telephone:	(602) 542-5057
Fax:	(602) 542-3046
E-mail:	cfarley@ade.az.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The State Board of Education is seeking to add new sections to the Board rules, R7-2-1011, governing school district procurement to meet the requirements of A.R.S. § 15-213(A)(3). These proposed rules establish the process for on-line bidding for use by schools and school districts. The proposed rules reflect the on-line bidding model established in statute for state agencies under A.R.S. 41-2672.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

The proposed rules will not diminish any previous grant of authority of a political subdivision of this state.
- 8. The preliminary summary of the economic, small business, and consumer impact:**

Neither the State Board of Education, the Department of Education, nor any school districts or other political subdivisions will be subject to additional costs by these rules. There will be no effect on small business or on state revenues, and there is not a less-intrusive method for accomplishing the goals achieved by these rules.

The economic and consumer impact is expected to be positive for school districts by allowing districts to procure goods and information services in a manner that best meets their needs while providing adequate safeguards in the procurement process and insuring cost effectiveness.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Christy Farley
Executive Director, State Board of Education

Address: 1535 West Jefferson, Room 418
Phoenix, AZ 85007

Telephone: (602) 542-5057

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10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: September 15, 2004

Time: 9:00 a.m.

Location: State Board of Education
1535 W. Jefferson, Room 437
Phoenix, Arizona 85007

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class or rules:

Not applicable

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

7-2-1001. Definitions

In this Article, unless the context otherwise requires:

1. "Advantageous to the school district" means in the best interest of the school district; does not necessarily mean lowest bid/cost.
2. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It also may include persons doing business under a variety of names, or where there is a parent-subsidiary relationship between persons.
3. "Application benefit" means a quantified assessment of the benefits to be achieved in school district program and support areas by the information systems or telecommunications systems proposed by the vendor, including reasonably projected reductions in program costs and increases in productivity of school district personnel.
4. "Architect services," "engineer services," "land surveying services," "assayer services," "geologist services" and "landscape architect services" means those professional services within the scope of the practice of those services as provided in A.R.S. Title 32, Chapter 1, Article 1.
5. "Bid sample" means an item furnished by a bidder to show the characteristics of the item offered in the bid.
6. "Bidder prequalification" means determining in accordance with this Article that a prospective bidder or offeror satisfies the criteria for being included on the bidders' list.
7. "Brand name or equal specification" means a specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet school district requirements, and that provides for the submission of equivalent products.
8. "Brand name specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers.
9. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
10. "Capability" means capability at the time of contract award.
11. "Change order" means a written order which directs the contractor to make changes that the changes clause of the contract authorizes the governing board to order.
12. "Clergy" means a minister of a religion.
13. "Construction" means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

14. "Contract" means all types of agreements, including purchase orders, regardless of what they may be called, for the procurement of materials, services or construction or the disposal of materials.
15. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
16. "Contractor" means any person who has a contract with a school district.
17. "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.
18. "Cost" means the aggregate cost of all materials and services, including labor performed by force account.
19. "Cost analysis" means the evaluation of cost data.
20. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.
21. "Cost-plus-a-percentage-of-cost contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work.
22. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if provided for in the contract.
23. "Data" means documented information, regardless of form or characteristic.
24. "Days" means calendar days and shall be computed pursuant to A.R.S. § 1-243.
25. "Debarment" means an action taken under R7-2-1161 et seq., to prohibit a person from participating in school district procurements.
26. "Defective data" means data that is inaccurate, incomplete or noncurrent.
27. "Dentist" means a person defined in A.R.S. § 32-1202 who also is licensed pursuant to A.R.S. Title 32, Chapter 11.
28. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction or operation of an item offered in a bid or proposal.
29. "Designee" means the governing board member or school district employee who has been delegated procurement authority by the governing board as specified by board action.
30. "Detailed record" means minutes, which shall include the date, time, place, persons in attendance and a summary of what was said by whom and the decisions made. The minutes may be made either in writing or by a recording.
31. "Discussions" means an exchange of information or any form of negotiation.
32. "District representative" shall be a district employee who has been most closely involved in the procurement being protested or shall be the

- governing board. There may be more than one appointed for different purposes and different procurements.
33. "Earth-moving, material-handling, road maintenance and construction equipment" means a track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loader or track loader having a published manufacturer's minimum unit list price of \$50,000 or more and a minimum expected life cycle of three years.
34. "Eligible procurement unit" means a public procurement unit or a nonprofit educational or public health institution.
35. "Employee" means an individual drawing a salary from a school district and any noncompensated individual performing personal services for any school district.
36. "Excess materials" means any materials which have a remaining useful life but which are no longer required by the using district in possession of the materials.
37. "Expendable materials" means all tangible materials other than nonexpendable materials.
38. "Fair market value" means the price at which sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition.
39. "Filed" means delivery to the district representative, school district or its hearing officer, whichever is applicable. A time/date stamp affixed to a document by the school district shall be determinative of the time or delivery for purposes of filing.
40. "Finished goods" means units of manufactured product awaiting sale.
41. "Force account" means work performed by the school district's regularly employed personnel.
42. "Goods" shall have the same definition as provided in the Arizona Uniform Commercial Code, Arizona Revised Statutes 47-2105 (A) for purposes of the Arizona Administrative Code, Chapter 7, Articles 10 and 11. "Goods" shall also include "finished goods" as defined in this rule.
- ~~42.~~43. "Governing board" has the meaning defined in A.R.S. § 15-101(7).
- ~~43.~~44. "Incremental award" means an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
45. "Information services" means data processing, telecommunications and office systems technologies and services.
- ~~44.~~46. "Information systems" means a system of hardware, software or vendor support costing more than \$100,000 that processes information or data by electronic data processing methods and devices.
- ~~45.~~47. "Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.

- 46-48. "Invitation for bids" means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in R7-2-1024.
- 47-49. "Legal counsel" means a person licensed as an attorney pursuant to rules of the Arizona Supreme Court, Vol. 17A, A.R.S.
- 48-50. "Life cycle" means the useful life of the information systems, telecommunications systems or equipment to the original using school district to perform the application for which it was initially procured.
- 49-51. "Local public procurement unit" means any political subdivision and any agency, board, department, or other instrumentality of such political subdivision.
- 50-52. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property, but does not include land, a permanent interest in land or real property or leasing space.
- 51-53. "May" denotes the permissive.
- 52-54. "Minor informality" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery or other contractual terms and the waiver or correction of such mistake does not prejudice other bidders or offerors.
- 53-55. "Multiple award" means an award of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
- 54-56. "Multistep sealed bidding" means a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the school district and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
- 55-57. "Nonexpendable materials" means all tangible materials which have an original acquisition cost over an amount set by regulation and a probable useful life of more than one year.
- 56-58. "Nonprofit educational or public health institution" means any educational or public health institution, no part of the income of which is distributable to its members, directors, or officers.
59. "On-line bidding" means a procurement process in which school districts and charter schools receive vendors' bids for goods, services, construction or information services electronically over the internet in a real-time, competitive bidding event.
- 57-60. "Outright purchase" means the initial cost to the school district for the earth-moving, material-handling, road maintenance and construction equipment or any other equipment, including all vendor charges and financing costs.
- 58-61. "Paper" means newspaper, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.

- ~~59~~.62. "Paper product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings or saturates.
- ~~60~~.63. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.
- ~~61~~.64. "Physician" means a person licensed pursuant to A.R.S. Title 32, Chapter 13 or 17.
- ~~62~~.65. "Post-consumer material" means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer material does not include discards from industrial or manufacturing processes.
- ~~63~~.66. "Posted prices" means the sale price determined by the school district to be fair market value.
- ~~64~~.67. "Price analysis" means the evaluation of price data.
- ~~65~~.68. "Price data" means information concerning prices, including profit, for materials, services or construction substantially similar to those being procured under a contract or subcontract. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices or current selling prices of the items being purchased.
- ~~66~~.69. "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any material, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- ~~67~~.70. "Proprietary specification" means a specification that describes a material made and marketed by a person having the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance or functional characteristics from being responsive to the solicitation.
- ~~68~~.71. "Public procurement unit" means either a local public procurement unit, the Arizona Department of Administration, or any other state or an agency of the United States.
- ~~69~~.72. "Purchase description" means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.
- ~~70~~.73. "Purchase request" or "purchase requisition" means that document, or electronic transmission, whereby a school district requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested source of supply and information supplied for the making of any written determination required by this Article.
- ~~71~~.74. "Qualified products list" means an approved list of materials described by model or catalogue numbers that, prior to competitive solicitation, the

governing board has determined will meet the applicable specification requirement.

- ~~72~~.75. "Recycled paper" means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least 40% recovered wastepaper with 10% of that being post-consumer material.
- ~~73~~.76. "Request for proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in R7-2-1042.
- ~~74~~.77. "Residual value" means the guaranteed minimum market value of the earth-moving, material-handling, road maintenance and construction equipment or any other equipment at the end of the life cycle of the equipment being procured, as determined by a guaranteed minimum value offered by the vendor or other parties in its bid.
- ~~75~~.78. "Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.
- ~~76~~.79. "Responsive bidder or offeror" means a person who submits a bid which conforms in all material respects to the invitation for bids or request for proposals.
- ~~77~~.80. "School district" has the meaning defined in A.R.S. § 15-101(15), whose authority is exercised by the governing board or its designee.
- ~~78~~.81. "Shall" denotes the imperative.
- ~~79~~.82. "Services" means the furnishing of labor, time or effort by a contractor which does not involve the delivery of a specific end product other than required reports and performance. "Services" does not include employment agreements or collective bargaining agreements.
- ~~80~~.83. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations or any other invitation or request by which the school district invites a person to participate in a procurement.
- ~~81~~.84. "Specification" means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.
- ~~82~~.85. "Specification for a common or general use item" means a specification that has been developed and approved for repeated use in procurements pursuant to R7-2-1102(A).
- ~~83~~.86. "Specified professional services" means services of an architect, engineer, land surveyor, assayer, geologist and landscape architect.
- ~~84~~.87. "Standard commercial material" means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.
- ~~85~~.88. "Surplus materials" means any materials that no longer have any use to the school district or materials acquired from the United States government.

- This includes obsolete materials, scrap materials and nonexpendable materials that have completed their useful life cycle.
- ~~86~~.89. "Suspension" means an action taken by the governing board under R7-2-1168 temporarily disqualifying a person from participating in school district procurements.
- ~~87~~.90. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications and its terms and conditions.
- ~~88~~.91. "Telecommunications systems" means systems costing more than \$100,000, including but not limited to all instrumentalities, facilities, apparatus and services, for the transmission and reception of messages, impressions, signs, signals, pictures, sounds or any other symbols by wire, radio, optical cable, electromagnetic or other similar means.
- ~~89~~.92. "Total cost" means total cost as defined in A.R.S. § 15-213(F).
- ~~90~~.93. "Total life cycle cost" means vendor costs, total school district costs and financing costs throughout the life cycle of the information systems or telecommunications systems being purchased or any other equipment purchased less residual value.
- ~~91~~.94. "Total school district costs" means costs to the school district for the information systems or telecommunications systems including energy, facilities, repair costs, present value of monies, vendor charges, personnel costs and all other identifiable school district costs.
- ~~92~~.95. "Vendor charges" means costs of all vendor support, materials, transportation and all other identifiable costs associated with the vendor's proposal or bid.
- ~~93~~.96. "Vendor costs" means costs of all hardware, materials, software, transportation, vendor support and all other identifiable costs associated with the vendor's proposal or bid.
- ~~94~~.97. "Vendor support" means services provided by the vendor for items such as consulting, education, training, management of the information systems or telecommunications systems or any other systems purchased, systems planning, development, integration and maintenance and training.
- ~~95~~.98. "Wastepaper" means recyclable paper and paperboard, including high-grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

R7-2-1011 On-line bidding for procurement of goods and information services

- A. If a school district designee determines that electronic, on-line bidding is more advantageous than other procurement methods provided in State Board of Education Rules Articles 10 and 11, a designee may use on-line bidding to obtain bids electronically for the purchase of goods and information services.
- B. An on-line bidding solicitation must designate an opening date and time.
- C. The closing date and time for an on-line solicitation may be fixed or remain open depending on the structure of the item being bid on line. Information regarding

the closing date and time must be included in the solicitation. At the opening date and time, the school district must begin accepting on-line bids and must continue accepting bids until the bid is officially closed.

- D. All on-line bids must be posted electronically and updated on a real-time basis.
- E. School districts, through their designee, may:

 - 1. Require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the solicitation.
 - 2. Prequalify bidders and allow only those bidders who are prequalified to submit bids on line.
- F. School districts retain their existing authority to determine the criteria that will be used as a basis for making awards.
- G. R7-2-1021 through R7-2-1050 do not apply to solicitations issued pursuant to this rule, except that:

 - 1. All bids submitted electronically through an on-line bidding process are public information and are subject to the same public disclosure laws that govern bids received through the sealed bid process.
 - 2. All remedies available to school districts and bidders through the sealed bid process under this chapter are also available to school districts and bidders in an on-line bidding process.
- H. Charter schools may utilize the on-line bidding process set forth in this rule if consistent with the terms of their charters, including any provisions regarding procurement and/or compliance with the Uniform System of Financial Records for Charter Schools.